

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

RICHARD L. DOPP,

Plaintiff,

v.

JUSTIN JONES, et al.,

Defendants.

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Case No. CIV-14-961-D

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing *pro se*, brings this action pursuant to 42 U.S.C. § 1983, alleging a violation(s) of his constitutional rights. Pursuant to an order entered by United States District Judge Timothy D. DeGiusti, this matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). For the reasons stated herein, it is recommended that the Plaintiff's Applications to Proceed *In Forma Pauperis*, ECF Nos. 2 and 6, be denied and the matter be dismissed unless the Plaintiff pays the full \$400.00 filing fee within twenty (20) days of any order adopting this Report and Recommendation.

A search of the Court's Case Management/Electronic Case Filing system reveals the Plaintiff has previously filed three or more civil actions that were dismissed for failure to state a claim for relief and/or as frivolous. Title 28 U.S.C. § 1915(g), the so-called three-strikes provision of the *in forma pauperis* statute, provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that

was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

This provision does not bar a “three-strikes” prisoner from filing civil actions, but it does eliminate the privilege of proceeding *in forma pauperis* unless the prisoner can support the application of the imminent-danger exception. A prisoner with three-strikes may, in any event, proceed in civil actions or appeals by prepaying the filing fee. See *Jennings v. Natrona Cnty. Det. Ctr. Med. Facility*, 175 F.3d 775, 778 (10th Cir. 1999).

Taking judicial notice of the Court’s records, Plaintiff has previously been denied¹ the privilege of proceeding *in forma pauperis* in civil actions filed in this Court based upon the finding that Plaintiff had, at that time, previously filed three or more civil actions that were dismissed for failure to state a claim for relief and/or as frivolous:

Dopp v. Ward, No. CIV-02-1559-T (W.D. Okla. Aug. 29, 2003)

Dopp v. Harkins, No. 02-CV-806-H (M) (N.D. Okla. Sept. 20, 2004)

Dopp v. Loring, No. 02-CV-659SEH-FHM (N.D. Okla. Mar. 11, 2005)

The Court’s records clearly demonstrate that the Plaintiff has “three strikes” and that the provisions of 28 U.S.C. § 1915(g) bar him from proceeding *in forma pauperis*. Further, the Complaint reveals nothing that would demonstrate that the imminent danger of serious physical injury exception applies. Accordingly, the only way to cure Plaintiff’s failure to comply with the Court’s previous orders is to pay the full filing fee of

¹ *Dopp v. Jones, et al.*, No. CIV-10-1198-D; dismissed (W.D. Okla. July 18, 2011); *Dopp v. Jones, et al.*, No. CIV-11-306-D, resulting in a voluntary dismissal (W.D. Okla. Nov. 29, 2010).

\$400.00 within twenty (20) days from the date of any order adopting this Report and Recommendation.

RECOMMENDATION

It is therefore recommended that the Plaintiff's Applications/Motions, **ECF Nos. 2 and 6**, be **DENIED** and that this action be dismissed without prejudice to re-filing unless Plaintiff pays the \$400.00 filing fee in full to the Clerk of the Court within twenty (20) days of any order adopting this Report and Recommendation.

Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of Court by **October 6, 2014**, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Plaintiff is further advised that any failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

This Report and Recommendation **disposes of all issues** referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED on September 19, 2014.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE